IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4540 OF 2004

Gulam Hussein Tungekar. ...Petitioner.
Vs.
The State of Maharashtra & Anr. ...Respondents.
....
Mrs. Eventa A. Gonsalves for the Petitioner.
Mr. V. P. Malvankar, AGP for Respondent No.1.
Mr. N.V. Walawalkar with Mr. G.H. Keluskar for Respondent No.2.
.....
CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

February 1, 2006.

P.C.

The reliefs that have been sought in this petition are (i) a writ of Mandamus declaring that the reservation of land bearing Survey No.121, Hissa Nos.3 and 5 at village Chanje, Taluka Uran, District Raigad and the public purpose for reserving the land has lapsed; (ii) a writ of Certiorari for quashing and setting aside the reservation and the acquisition of the land; and (iii) a writ of Mandamus directing the Respondents to release the land from reservation and acquisition and to hand over possession thereof to the Petitioner.

The land in question, has been acquired for the purposes

of the Uran Municipal Council. A notification under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966, read with Section 6 of the Land Acquisition Act, 1894 was published in the Gazette on 18th November 1976, possession was taken on 5th January 1977 and an award came to be passed by the Special Land Acquisition Officer, Raigad on 30th December 1981. The Petitioner filed LAR 46 of 1982 for enhancement of compensation in which it has been stated that compensation was enhanced. That case is pending now before this Court. The Petitioner had filed Writ Petition 1688 of 2000 before this Court, the grievance there being that the Municipal Council was constructing a structure for accommodating toilet facilities for the benefit of slum dwellers who had encroached upon the land which was reserved for a play ground. This Court in its order dated 4th May 2000 issued several directions to the Municipal Council with a view to ensuring that the purpose of the reservation is duly fulfilled. Thereafter contempt proceedings were initiated before this Court on the allegation that the order of the Court had not been complied with. On 16th October 2002, the Contempt Petition was disposed of by a Learned Single Judge of this Court with the observation that the affidavit in reply filed by the Municipal Council showed that the order of the Court

had been complied with.

There is absolutely no merit in the Petition. The land was vested in the Municipal Council in pursuance of acquisition proceedings which were carried out in accordance with law. In such a situation, the erstwhile owner cannot be heard to contend that the reservation has lapsed or that the land should be restored to him. For the record, it would be necessary to take note of the fact that the Municipal Council has filed an affidavit in these proceedings in which it has been stated that after encroachments were removed, the Municipal Council by a resolution dated 14th May 2001 approved the development of a play ground by giving necessary financial and administrative sanction and obtaining financial aid from the Town Planning Department. The General Body of the Municipal Council thereafter proceeded to accept the tenders for the development of the play ground and after the completion of the work on 6th April 2002, the play ground was inaugurated on 29th April 2003. Quite apart from the reply that has been filed by the Municipal Council, it is evident that even as a matter of first principle, the reliefs that have been sought in the petition cannot be granted. The lands have vested in the Municipal

Council in pursuance of the acquisition proceedings. The remedy of the Petitioner was to seek an enhancement of compensation if he was aggrieved by the award to which he has already taken recourse. It is settled law that even after the public purpose for which the land is acquired is achieved, once vesting is complete, the land can be utilised for any other public purpose. The Supreme Court had held in **State of Kerala vs. M. Bhaskaran Pillai,** (1997) 5 SCC 432 that in case there is no other public purpose for which the land is needed, even then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction so that the amount that is realised in the auction can be utilised for a public purpose as envisaged in the Directive Principles of the Constitution. In the present case, therefore, even that eventuality does not arise since the land has been used for the public purpose of a play ground for which it has been reserved. The petition is lacking any merit.

The petition is accordingly dismissed. No order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)